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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,703	01/22/2001	Waifong Liew Anton	Rev 96-3B	2009

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EXAMINER

WANG, SHENGJUN

ART UNIT PAPER NUMBER

1617

DATE MAILED: 12/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/765,703	ANTON ET AL.	
	Examiner	Art Unit	
	Shengjun Wang	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 20 August 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 41-60 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 41-60 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) Other: _____

DETAILED ACTION

The Request for a Continued Examination (RCE) under 37 CFR 1.114 filed on August 20, 2002 based on parent Application No. 09/765703 is acceptable and a RCE has been established. An action on the RCE follows.

Claim Rejections 35 U.S.C. 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

41-60
2. Claims ~~21-40~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over Castrogiovanni et al. (US 5,505,937, of record) in view of Mercado et al. (U.S. 4,996,044), Papantoniou et al. (3,911,105), Kumar et al. (US 5,468,477, of record), Jacks et al. (U.S. 5,690,918), International Cosmetic Ingredient dictionary and Handbook, and Mausner (U.S. 5,352,441).

3. Castrogiovanni et al. et al. teaches a lipstick comprising a polymer, volatile oil, non-volatile oil, wax employed herein and other ingredients well-known for lipstick, such as wax, isododecane, lanolin oil, dimethylsilicone, cyclomethicone, trioctyldodecyl citrate, etc. See the entire document, particularly, the examples, and the claims. Note the lipstick may also contain polymethacrylate or polyacrylate. See column 3, lines 25-26

4. The primary reference does not teach expressly the employment of the methacrylate polymers herein, or the vinylpyrrolidone copolymers, or fluorinated oil.

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5. However, Papantoniou et al. teaches that poly methacrylate is known to be useful in lipstick composition for its film forming properties with other well-known ingredients such as silicone wax, lanolin oil etc. See, particularly, the abstract, column 1, lines 48 bridging to column 3, line 16; and example 18. The employment of such polymer render the lipstick better quality than those without using polymer. See, column 1, lines 25-47. Mercado et al. teaches expressly the usefulness of polyacrylate polymer in lipstick formulation. See, particularly, column 3, lines 1-60, and example 18. Further, copolymers of vinylpyrrolidone are particularly known as film former in lipstick. See, particularly, the abstract, column 5, line 66 bridging column 6, line 10. and/or page 1179 in "International Cosmetic Ingredient Dictionary and Handbook"

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to modify the lipstick composition of Castrogiovanni et al. by using the combination of acrylate polymer and vinylpyrrolidone copolymer.

A person of ordinary skill in the art would have been motivated to modify the lipstick composition of Castrogiovanni et al. using the combination of acrylate polymer and vinylpyrrolidone copolymer because methyl methacrylate polymer and vinylpyrrolidone copolymers are known to be useful in lipstick composition. Claim 45 is rejected for reasons set forth above in further view of Kumar et al. Kumar et al. that isobornyl methacrylate is known to be similarly useful as methyl methacrylate as they polymerize to form polymers with similar glass transition temperature. See column 15, line 10 bridging column 16, line 11, particularly, column 16, lines 9-11. Note it is prima facie obvious to combine two compositions each of which

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is taught in the prior art to be useful for same purpose in order to form third composition that is to be used for very the same purpose; idea of combining them flows logically from their having been individually taught in prior art; thus, the claimed invention which is a combination of two known film forming polymer known to be useful in lipstick sets forth *prima facie* obvious subject matter. See In re Kerkhoven, 205 USPQ 1069. The optimization of the percentage of each known ingredient in a cosmetic composition is considered within the skill of artisan, absent evidence to the contrary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Examiner



Shengjun Wang

December 13, 2002